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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

In re)	
)	
KAISER GYPSUM COMPANY, INC. and)	CASE NO. 3:16-ap-3127 RLD
HANSON PERMANENTE CEMENT, INC.)	
(f/k/a Kaiser Cement Corporation),)	
)	
Debtors.)	CERTAIN INSURERS' OPPOSITION TO
)	MOTION TO REMAND
-----)	
KAISER GYPSUM COMPANY, INC. and)	
HANSON PERMANENTE CEMENT, INC.)	
(f/k/a Kaiser Cement Corporation)	
)	
Plaintiffs,)	
)	
v.)	
)	
AIU INSURANCE COMPANY, et al.,)	
)	
Defendants.)	
-----)	

Defendants U.S. Fire Ins. Co.¹, TIG Ins. Co.², and Associated International Ins. Co. (collectively “Certain Insurers”) submit this separate opposition to Kaiser’s³ Motion to Remand (Dkt. 55) requesting that the motion be denied for the reasons stated below.

First, Kaiser concedes that the day after it filed its Oregon state court action, it filed the North Carolina action seeking a discharge of its asbestos and pollution liabilities in a case styled *In re Kaiser*, et al., No. 16-31602 (the “North Carolina Bankruptcy”). Dkt. 55, p. 4. Kaiser also vigorously – and successfully – opposed a motion to transfer the venue of its bankruptcy case to the Western District of Washington. That opposition was based in part on Kaiser’s contention that North Carolina was a convenient forum for all parties to litigate matters related to its reorganization, including matters related to the environmental liabilities that are the subject of the action before this Court. Specifically, the Debtors made the following statement in their opposition to the motion to transfer:

That the parties in interest in these cases, including the Debtors, their creditors, their insurers, and the postpetition lender are located across the country and, in most instances, are far closer to North Carolina than Washington weighs heavily in favor of retaining these cases in North Carolina. A transfer to Washington would materially and needlessly increase the costs of these cases by requiring witnesses and professionals, who are predominately located on the East Coast, Midwest and Southwest, to travel across the country for hearings.

In re Kaiser, No. 16-31602, Dkt. 128 at 10-11.

¹ U.S. Fire is identified in the complaint as “United States Fire Insurance Company (as successor by novation to Industrial Indemnity Company.”

² TIG is identified in the complaint as “TIG Insurance Company (as successor by merger to International Insurance Company, as successor by merger to International Surplus Lines Insurance Company) AND as successor by merger to Fairmont Premier Insurance Company, f/k/a TIG Premier Insurance Company, f/k/a Transamerica Premier Insurance Company).”

³ The two debtors will collectively be referred to as “Kaiser.”

Kaiser clearly expects that the environmental disputes will be resolved through the North Carolina Bankruptcy. In fact, the Debtors represented to the North Carolina court that they “intend to seek a bar date for non-asbestos claims and a discharge of their liabilities at the two environmental Sites.” Dkt. 64 at 4. Kaiser has presented no persuasive reason why pollution coverage issues should be treated differently by litigating them in an Oregon state court. Nor does Kaiser’s motion give any persuasive reason why North Carolina is a convenient forum to litigate the resolution of the environmental liabilities, but not its insurance coverage for those liabilities (even though all parties agree that the insurance coverage issues are non-core).

Second, and relatedly, Kaiser’s statements in this case also refute its contention that North Carolina is an inconvenient forum. Not only did Kaiser itself choose the Western District of North Carolina to file its bankruptcy petition, it has also conceded that Oregon was chosen to increase Kaiser’s chances of obtaining the application of Oregon law rather than for the convenience of witnesses and the parties. Dkt. 28 at 12.

Third, Kaiser’s contention that the insurance issues “bear little relation to the main bankruptcy case,” Motion to Remand (Dkt. 55) at 12, is self-evidently wrong. In light of Kaiser’s apparently careful and decades-long structuring of the companies that were put into bankruptcy to strip them of the vast bulk of their assets other than the insurance policies, the insurance issues will clearly have a substantial effect on the North Carolina Bankruptcy case.

Fourth, the Debtors’ motion to remand must be denied because there is no related state court proceeding to remand to. *Security Farms v. International Bhd. of Teamsters*, 124 F.3d 999, 1010 (9th Cir. 1997) (denying remand and explaining that remand based on mandatory

abstention was not appropriate where the state court proceeding had been “successfully removed . . . to federal court. No other related proceeding thereafter exists.”).

Certain Insurers do not take a position on the other complex substantive issues raised by Kaiser and Underwriters in their respective briefs, other than to state that they are premature and should not be decided at this early stage of the litigation.

DATED: November 30, 2016

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CERTIFICATE OF SERVICE

On the date given below I caused to be served the foregoing CERTAIN INSURERS'
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by the following indicated method or methods on the date set forth below:

- by CM/ECF
- by Electronic Mail
- by Facsimile Transmission
- by First Class Mail
- by Hand Delivery
- by Overnight Delivery

DATED: November 30, 2016.

/s/ Lou Rosenkranz
Lou Rosenkranz, Legal Assistant

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Case 16-03127-rfd Doc 97 Filed 11/30/16